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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,803	09/18/2003	Christopher F. Lang	CM-076B US	6138

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EXAMINER

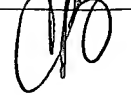
NOVOSAD, JENNIFER ELEANORE

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 03/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/665,803	Applicant(s) LANG ET AL. 	
	Examiner Jennifer E. Novosad	Art Unit 3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3,4 and 6-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3,4 and 6-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>11-10-2003</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Office action is in response to the application filed September 18, 2003 and the preliminary amendment filed therewith whereby the specification was amended, claims 1, 2, and 5 were canceled and claims 3, 4, and 6-8 were amended.

Information Disclosure Statement

It is noted that the foreign patent documents and the other documents listed on the Information Disclosure Statement (PTO-1449) can be found in the parent application, i.e., 09/769,578.

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: (a) 12A and 18A, as in Figure 2, and (b) 14B, 16B, and 18B, as in Figure 3. A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

It is noted that this application claims priority of Application No. 09/769,578, filed January 25, 2001. *Accordingly*, the disclosure is objected to because in line 2 of the first sentence on page 1 (see the preliminary amendment filed with the application), --now U.S.

Patent No. 6,655,537,-- should be inserted before "the entire contents". Appropriate correction is required.

The use of the trademark Velcro (see line 16 of page 4) has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology. Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3, 4, and 6 and 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 3, 4, and 6 are rendered indefinite since the structural relationship between the elements is unclear. *In particular*, it is unclear from the use of the limitation "from second sides thereof", e.g., line 6 of claim 3, what structure is being referenced, i.e., second sides of what?

Claim 6 recites the limitation "the connecting sections" in line 8. There is insufficient antecedent basis for this limitation in the claim. It is noted that a, i.e., singular, "connecting section" is set forth in line 5.

The claimed combination of claim 7 is rendered indefinite. *In particular*, it is noted that Figure 4 shows a cart, as recited in claim 7. *However*, claim 6 requires that supporting sections

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extend from second sides (of the supporting members) for connection to a suspending support member. *Thus*, it can be seen from Figure 4, that although a supporting section (21c and 14c) extends from a second side of both support members (68c), only one supporting section (21c) is for connecting to the suspending support member.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 3 is rejected under 35 U.S.C. 102(b) as being anticipated by Herlevi *et al.* '460 (U.S. Patent No. 6,109,460).

Herlevi *et al.* '460 disclose a support rack (see Figures 4 or 5) which comprises a wire body section including at least two support members (at 8) defined by two upwardly extending, essentially U-shaped members; a connecting section (5) extending between first sides of the support members (8); supporting sections (at 9) extending from second sides of the support members (8) for connection to a suspending support member (10) in a swivel manner (at 11) whereby the supporting sections are defined by an upper leg section (left side of Figure 5) and a lower leg section (right side of Figure 5).

It is noted that although Herlevi *et al.* '460 do not show the rack holding/supporting a plastic container, the rack of Herlevi *et al.* '460 is considered to be capable of holding/supporting such an item. It is further noted that the claims merely functionally recite such an item.

With respect to the recitation "an upper and lower leg section" in lines 8-9 of claim 3, it is noted that the leg portions are considered to define "upper" and "lower" leg sections, in such a way as claimed. In particular, it is noted that the claim does not structural link the leg sections in any way, e.g., the upper leg is disposed above the lower leg.

Claim 4 is rejected under 35 U.S.C. 102(b) as being anticipated by Smith '167 (U.S. Patent No. 2,902,167).

Smith '167 discloses a support rack which comprises a wire body section including at least two support members (at 8) defined by two upwardly extending, essentially U-shaped members; a connecting section (11, 12, and 11) extending between first sides of the support members (8); supporting sections (at 7, 4, c, 6, and 5) extending from second sides of the support members (8) for connection to a suspending support member (2) whereby the supporting sections are defined by two spaced apart arm sections.

It is noted that although Smith '167 does not show the rack holding/supporting a plastic container, the rack of Smith '167 is considered to be capable of holding/supporting such an item. It is further noted that the claims merely functionally recite such an item.

Claim 6 is rejected under 35 U.S.C. 102(b) as being anticipated by Palmer '799 (U.S. Patent No. 4,974,799).

Palmer '799 discloses a support rack (see Figure 1) which comprises a wire body section including at least two support members (generally at 23 and 24) defined by a multiplicity of finger members including undulations of the wire body section; a connecting section (unnumbered) extending between first sides of the support members; supporting sections (at 21

and 22) extending from second sides of the support members for connection to a suspending support member which defines a rolling cart.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas '882, alone (U.S. Patent No. 1,089,882).

Thomas '882 discloses a rack comprising a body section including at least two support members (2nd and 5th elements 14 from the top of Figure 1) defined by two upwardly extending, essentially U-shaped members (each U-shape is defined by an element 14 and a portion of 8); a connecting section (the portion of element 8 extending between the 2nd and 5th elements 14) extending between first sides of the support members; supporting sections extending from second sides of the support members for connection to a suspending support member (1) in a swivel manner (at 3) whereby the supporting sections are defined by an upper leg section (comprised of the portion of element 8 extending upwardly from the 2nd element 14 and including 7, the top portion of 5 and 4 and 3 at the top of Figure 1) and a lower leg section (comprised of the portion of element 8 extending downwardly from the 5th element 14 and including the lower portion of 5, and 4 and 3 at the bottom of Figure 1).

The claim differs from Thomas '882 in requiring the body section to be wire.

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Although Thomas '882 does not disclose the rack having a *wire* body section, it would have been an obvious design choice to one of ordinary skill in the art at the time the invention was made to have fabricated the rack to have a *wire* body section, as called for in the claim, for ease in economy and manufacture.

It is noted that although Thomas '882 does not show the rack holding/supporting a plastic container, the rack of Thomas '882 is considered to be capable of holding/supporting such an item. It is further noted that the claims merely functionally recite such an item.

Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Palmer '799, alone.

Palmer '799 discloses the rack as advanced above which comprises a rolling cart.

Although Palmer '799 does not disclose the cart connected to the extension between the finger members, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have connected the rack to the cart, in the way called for in the claims, for increased structural support of the rack thereby allowing for increased storage capabilities.

Conclusion

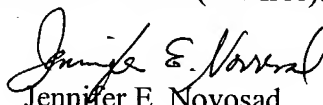
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patents show various wire racks: (a) 317,242; (b) 920,633; (c) 4,777,888; and (d) 1,576,227. The following patents show various bag holding racks: (a) D362,577; (b) 4,915,330; (c) 6,651,941.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is (703)-305-2872. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (703)-308-2686. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jennifer E. Novosad
Primary Examiner
Art Unit 3634

Jennifer E. Novosad/jen
March 11, 2004